

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

NOV 19 2015

OFFICE OF
MANAGING DIRECTOR

William M. Holland
Receiver, Nevada District Court
2850 S. Jones Blvd., Suite 1
Las Vegas, NV 89146

Licensee/Applicant: William M. Holland, Receiver
Waiver and Refund of Application Fees:
Receivership (Financial Hardship)
Disposition: Denied (47 C.F.R. §§ 1.1115,
1.1119(a), and 1.1166(c) & (e))
Station(s): Multiple
Fee(s): Application Fees
Date Request Filed: Submitted: Jul. 16, 2014
Date Application Fees Paid: Jul. 10, 2014
Fee Control No.: RROG-14-00015672

Dear Mr. Holland:

This responds to Licensee's *Request*¹ for "a refund of the application fees associated with the subject license assignment of authorization applications." As we discuss below, we deny the *Request* because Licensee failed to establish both good cause and that a waiver of the application fees is in the public interest, elements necessary for the Commission to waive the application fees and thereafter to refund the fees paid.

Background

On July 10, 2014, Licensee filed an application to assign numerous calls signs from PCS, LLC to Licensee. Relevant to his *Request*, Licensee asserts he "understand[s] from FCC staff that [he] can request a refund of the application filing fees."² He "believes that he should be entitled to a refund of any paid application filing fees because of the special circumstances involved in [the] case: that the license assignment of authorization applications are pursuant to a court Receivership Order (Exhibit 1 hereto). ... Receiver believes that he should not have to pay application fees in order for him to fulfill said court Receivership Order."³ He states, the "refund ... will reduce administrative costs and leave more funds for the receivership estate ... it is in the public interest to refund the ... fees"⁴ Finally, Licensee states, "a copy of [the Request] along

¹ FCC Form 603, Universal Licensing System (ULS) Application No.: 0006361965, Exhibit 1, Application Filing Fee Refund Request (*Request*), with Exhibit A, *AMTS Consortium, LLC v. Pappammal Kurian, et al*, Order Granting Plaintiff's Motion to Appoint William Holland as Receiver, Case No. A-12-669776-C (Nevada, Dist. Ct.) (Jan. 29, 2014) (*Court Order*).

² *Request*.

³ *Id.*

⁴ *Id.*

with the subject Form 601s, will be mailed to [the Managing Director, FCC].”⁵ On July 16, 2014, we received the *Request*.

Standards

Applicants are expected to know the Commission’s rules and procedures⁶ at 47 C.F.R. §§ 1.1115 and 1.1119 for filing a timely and proper application for a waiver and refund of fees. Specifically, under section 1.1115(a)(5), “[t]he full amount of any fee submitted will be returned or refunded, as appropriate * * * When a waiver is granted in accordance with this subpart.”⁷ Under section 1.1119, the relevant fee “may be waived ... in specific instances where good cause is shown and where waiver or deferral of the fee would promote the public interest.”⁸ The request “shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. * * * (f) Petitions for waiver of a fee based on financial hardship will be subject to the provisions of paragraph 1.1166.”⁹ 47 C.F.R. § 1.1166 provides, in part, a “fee ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest.”

In establishing an application¹⁰ fee program, the Commission recognized that in certain instances, payment of an application fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced, or deferred upon a showing of *good cause*¹¹ and a finding that the *public interest will be served thereby*.¹² The applicant has the burden of demonstrating relief is warranted,¹³ i.e., that special circumstances warrant a deviation from the general rule to collect the regulatory fee, and that the deviation will serve the public interest.¹⁴ In other words, compelling and extraordinary circumstances must outweigh the public interest in

⁵ *Id.*

⁶ 47 C.F.R. § 0.406; see *Life on the Way Communications, Inc., Forfeiture Order* 30 FCC Rcd 2603, 2607 (2015).

⁷ 47 C.F.R. § 1.1115.

⁸ 47 C.F.R. § 1.1119.

⁹ *Id.*

¹⁰ Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Report and Order*, 2 FCC Rcd 947, ¶¶87-88 (1987) (*Application Fee R&O*) (“The fees to be collected by the Commission were established by the Congress. The legislative history unequivocally states that our discretion to waive or defer fees shall be narrowly defined. * * * We read the legislative history so as to allow the Commission, in its discretion, to grant waivers or deferrals only for good cause shown when such action will promote the public interest. Consistent with this congressional intent to narrowly limit our authority, those requesting a waiver or deferral will have the burden of demonstrating that, for each request, a waiver or deferral would override the public interest, as determined by Congress, that the government should be reimbursed for that specific regulatory action of the FCC. As we stated in the NPRM [Notice of Proposed Rulemaking], we believe that, in most instances, the general public interest in reimbursing the government for services provided would far outweigh the private interest in waiving or deferring the small, incremental cost represented by these fees.”).

¹¹ 47 C.F.R. § 1.3.

¹² 47 U.S.C. §158(d)(2); 47 C.F.R. §§ 1.1119(a), (e), & (f), 1.1166. See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995) (1994 *Report and Order*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹³ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

¹⁴ *Northeast Cellular*, 897 F.2d at 1166.

recouping the Commission's costs.¹⁵ Fee relief based on asserted financial hardship requires a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.¹⁶ In such cases, financial hardship is more than "[m]ere allegations or documentation of financial loss, standing alone. Rather, we will grant a waiver only when the impact of the ... fee will affect a regulatee's ability to serve the public. It [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the application fee and to maintain its service to the public."¹⁷ The Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the applicant lacks sufficient funds to pay the fee and maintain service to the public.¹⁸

Where relevant, the fact that the licensee is in bankruptcy or is an appointed receiver¹⁹ may be evidence of financial hardship; however, that fact will not relieve the petitioner of meeting the elements of our standard.²⁰ As such, we will deny an unsupported request.²¹

Discussion

Licensee paid the fees with the application; however, in his *Request*, he fails to establish the elements of our standard. Specifically, Licensee failed to establish a "compelling case of financial hardship"²² that would "override the public interest in reimbursing the Commission for

¹⁵ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (*FY 1994 MO&O*). 1994 *Report and Order*, 9 FCC Rcd at 5344 ¶ 29; Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

¹⁶ *FY 1994 MO&O*, 10 FCC Rcd 12759, 12761-62, ¶ 13.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ We require evidence that the licensee is in bankruptcy or that the receivership is based upon appropriate financial purposes, e.g., to protect, preserve, and potentially enhance the value of the assets and to maintain operations.

²⁰ 47 U.S.C. § 158(d)(2) ("The Commission may waive or defer payment of a charge in any specific instance for good cause shown, where such action would promote the public interest."); 47 C.F.R. §§ 1.1119(a), (c) & (f), 1.1166 ("fee ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003); *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12. Black's Law Dictionary (9th ed. 2009) (extraordinary-"a highly unusual set of facts that are not commonly associated with a particular thing or event"; compelling-"something so great that irreparable harm or injustice would result if not met").

²¹ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003) (*FY 2003 R&O*).

²² 1994 *Report and Order*, 9 FCC Rcd at 5344 ¶ 29; In The Matter of Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, *Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. ... [I]n the absence of a documented showing of

its ... costs”²³ and to show how the “impact of the application fee will affect [Licensee’s] ability to serve the public.”²⁴

Licensee fails to articulate the reason for requesting waiver. Rather, he “believes ... he should be entitled to a refund ... because of the special circumstances ... that the license assignment [is] pursuant to a court Receivership Order” excuses him from paying “application fees ... to fulfill [the] court Receivership Order.”²⁵ He states, the “refund ... will reduce administrative costs and leave more funds for the receivership estate.”²⁶ This is a wrong approach. Because Licensee fails to identify the specific basis for the *Request*, we must infer from Licensee’s conclusory statements that he seeks a refund based on a waiver to be granted because of financial hardship. In the context of our rules at 47 C.F.R. §§ 1.1115 and 1.1119, it appears that if Licensee had stated a reason for a refund, it would be the requirement to pay the fees should be waived based on determinations that the applicant did or will experience financial hardship by paying the fees, and that he has demonstrated both good cause and that public interest is served in granting the waiver. If that is Licensee’s theory, Licensee had to establish financial hardship and compelling circumstances overriding the public interest in collecting the applications fees. He did not.

Licensee’s mere assertion that he is a receiver does not establish financial hardship. Indeed, in this case, Licensee fails to provide any evidence that the receivership appointment arose because of financial hardship, *e.g.*, insolvency, or to furnish any financial documentation supporting a claim that Licensee lacks the funds to pay the fees. Instead, Licensee offers only a broad assertion that he is a state court appointed receiver, but that status does not support the waiver, because Licensee fails to explain the legal basis for the appointment. In that regard, we take note that under Nevada Revised Statutes Title 3, Chapter 32, Sections 32.010 and 32.015, a receiver may be appointed for any of seven reasons, one of which pertains to financial hardship in the form of insolvency. Moreover, Licensee is a state court appointed receiver. When the Commission referred to receivership proceedings,²⁷ it was speaking of those in the federal courts and in the context of a bankruptcy liquidation case.²⁸ In 2003, the Commission explained, the

insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission’s recouping the costs of its regulatory activities.”).

²³ *FY 1994 MO&O*, 10 FCC Rcd 12759, 12761-62, ¶ 13.

²⁴ *Id.*

²⁵ *Request*.

²⁶ *Request*.

²⁷ *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 14.

²⁸ *Matter of Phillips*, 966 F.2d 926, 930 (5th Cir. 1992), *rehearing denied* (1992):

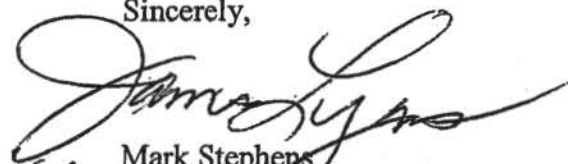
Congress consolidated federal bankruptcy law in the Bankruptcy Act of 1898. *See* Act of July 1, 1898, c. 541, 30 Stat. 544. At that time, bankruptcy law only facilitated liquidation. Not until 1933 did Congress amend the Bankruptcy Act to permit reorganization of certain entities. *See* Pub.L. No. 72-420, 47 Stat. 1474 (1933). In 1938, Congress amended the Bankruptcy Act with the precursor to Chapter 11 to facilitate general corporate reorganization. *See* Act of June 22, 1938, Pub.L. No. 74-575, 52 Stat. 840 (1938). Until Congress substantially revised the Bankruptcy Act with the Bankruptcy Reform Act of 1978, the Bankruptcy Act apparently referred to entities undergoing Chapter 7 liquidation as “bankrupts,” and those undergoing Chapter 11 reorganization as “debtors.” *See* S. REP. No. 989, 95th Cong., 2d Sess. 23 (1978), *reprinted in* Historical and Revision Notes following 11 U.S.C.A. § 101(12) at 36 (1979), *and reprinted in* 1978 U.S.C.A.N. 5787, 5809. But the Bankruptcy Reform Act of 1978 removed all references to

applicant must show that the proceeding represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions.²⁹ The applicant must show the appointment was because of financial hardship and pursuant to federal law.³⁰

In addition to Licensee's failure to establish the relevant basis for the appointment, Licensee failed to present the financial documentation necessary to determine both that payment of the fees creates hardship and that the waiver will be in the public interest. Instead, Licensee provided only a *Court Order* showing the opposite. Rather than providing some evidence of financial hardship to support a waiver, the *Court Order* suggests sufficient funds are available to pay the fees. To be sure, the *Court Order* gives Licensee a lengthy listing of duties, but those duties include "pay[ing] any reasonable fees associated with any lawful license, permit or other governmental approval," in addition to incurring expenses, operating the underlying business, employing professionals to provide services, paying insurance premiums and taxes, and preparing and providing monthly financial reports to the Clerk of the Court, other counsel, and "other interested parties."³¹ When compared to the content of the *Request*, the *Court Order* highlights Licensee's gap in reasoning and supporting documentation, and it offers evidence that Licensee was instructed to pay the fees and that Licensee had or should have had financial records covering the four months before submitting the *Request*.³² Despite their availability, Licensee did not include those records with his *Request*. Licensee does not demonstrate a "compelling case of financial hardship" that would "override the public interest in reimbursing the Commission for its regulatory costs" and how the "impact of the application fee will affect [Licensee's] ability to serve the public."³³ Hence, we deny the *Request*.

If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,


FOR: Mark Stephens
Chief Financial Officer

"bankrupt" in federal bankruptcy law, created the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, and adopted "debtor" to refer to all who seek protection under the Code, whether they do so through liquidation under Chapter 7 or reorganization under Chapter 11. See 11 U.S.C. § 101 (12); see generally H.R. REP. No. 595, 95th Cong., 2d Sess. 3-5 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 5965-66 (recounting Reform Act's history and purpose).

²⁹ FY 2003 R&O, 18 FCC Rcd at 6090, ¶ 11.

³⁰ Federal Rule of Civil Procedure 66. See *Netsphere, Inc. v. Baron*, 703 F.3d 296, 306 (5th Cir. 2012); Wright & Miller, 12 Fed Prac. & Proc. Civ. § 2983 (2d ed.).

³¹ *Court Order*.

³² *Court Order* at 5.

³³ FY 1994 MO&O, 10 FCC Rcd 12759, 12761-62, ¶ 13.